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7

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
Against:

13 CARLOS HUMBERTO MONTENEGRO, M.D.

14 P.O. Box 94743  
15 Pasadena, California 91109

16 Physician's and Surgeon's Certificate No. A 48811,

17 Respondent.  
18

Case No. 800-2021-082593

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On December 21, 2021, Complainant William Prasifka, in his official capacity as the  
21 Executive Director of the Medical Board of California (Board), filed a Petition to Revoke  
22 Probation No. 800-2021-082593 against Carlos Humberto Montenegro, M.D. (Respondent)  
23 before the Board.

24 2. On October 22, 1990, the Board issued Physician's and Surgeon's Certificate No. A  
25 48811 to Respondent. Said Certificate was in full force and effect at all times mentioned herein,  
26 except that said Certificate was subject to a Cease Practice Order (CPO), effective July 31, 2020,  
27 which was lifted on September 11, 2020, and a subsequent Cease Practice Order, effective  
28 February 26, 2021, which was lifted on April 22, 2021. Respondent's Certificate will expire on

1 August 31, 2022, unless renewed.

2 3. In a disciplinary action titled *In the Matter of the Accusation Against Carlos*  
3 *Montenegro, M.D.*, Case No. 22-2010-205578, the Board issued a Decision, effective April 16,  
4 2014, in which Respondent's Certificate was revoked. However, the revocation was stayed and  
5 Respondent's Certificate was placed on probation for a period of four (4) years with certain terms  
6 and conditions. That Decision is now final and is incorporated by reference as if fully set forth  
7 herein.

8 4. In a disciplinary action titled *In the Matter of the Amended Accusation and Petition to*  
9 *Revoke Probation Against Carlos Humberto Montenegro, M.D.*, Case No. 800-2015-012720, the  
10 Board issued a Decision, effective May 22, 2020, in which Respondent's Certificate was again  
11 revoked. However, the revocation was stayed and Respondent's Certificate was placed on  
12 probation for a period of two additional (2) years with the same terms and conditions of his earlier  
13 probation, plus the addition of conditions for substance-abusing licensees. That Decision is now  
14 final and is incorporated by reference as if fully set forth herein.

15 5. On December 22, 2020, the Medical Board of California issued to Respondent a  
16 Citation, number 800-2020-073387, ordering him to maintain compliance with all terms and  
17 conditions of his probationary orders and pay a fine of \$350, for his failures to check-in during  
18 program hours on October 9, October 14 (sic), October 28, November 9, and November 12 (sic),  
19 2020. That Citation is now final and is incorporated by reference as if fully set forth herein.

20 6. At all times mentioned herein, Respondent's address of record with the Board has  
21 been and is P.O. Box 94743, Pasadena, California 91109.

22 7. On December 21, 2021, Merlene Francis, an employee of the Board, served a copy of  
23 the Petition to Revoke Probation No. 800-2021-082593, along with a Statement to Respondent,  
24 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and  
25 11507.7 to Respondent's address of record with the Board by Certified Mail number 7021 0350  
26 0002 0527 2763, return receipt requested. A true and correct copy of the Petition to Revoke  
27 Probation, the related documents, and Declaration of Service are attached to the Evidence Packet  
28 as Exhibit A, and are incorporated herein by reference.

1           8.     Service of the Petition to Revoke Probation was effective upon its dispatch to the  
2 Respondent's address of record as a matter of law under the provisions of Government Code  
3 section 11505, subdivision (c).

4           9.     Respondent failed to file a Notice of Defense with the Board by the deadline of  
5 January 5, 2022, or at any other time.

6           10.    On January 25, 2022, Debbie Ruiz, the secretary for the Deputy Attorney General  
7 (DAG) assigned to this matter, sent Respondent a Courtesy Notice of Default attaching a copy of  
8 the Petition to Revoke Probation along with two blank Notice of Defense forms to his address of  
9 record at P.O. Box 94743, Pasadena, California, California 91109, via regular United States Mail,  
10 and another to his medical clinic's business address of 1800 West 6th Street #3, Los Angeles, CA  
11 90057, via Certified Mail number 9414 7866 9904 2192 9881 30, return receipt requested. The  
12 Courtesy Notice of Default informed Respondent that:

13                "If you fail to take action immediately by filing a Notice of Defense within 14 calendar  
14 days of this notice, the Medical Board of California will prepare a Default Decision against your  
15 license and your license may be revoked or suspended without any hearing.

16                If you wish to present a defense to the charges set forth in the Petition to Revoke Probation,  
17 you must immediately send a completed Notice of Defense to:

18                   Colleen M. McGurrin  
19                   Deputy Attorney General  
20                   Ronald Reagan Building  
                    300 South Spring Street, Suite 1702  
                    Los Angeles, CA 90013."

21           A copy of the Courtesy Notice of Default, the related documents, and Declaration of  
22 Service are attached to the Evidence Packet as Exhibit B, and are incorporated herein by  
23 reference.

24           11.    On or about January 27, 2022, the aforementioned Courtesy Notice of Default sent to  
25 Respondent's medical clinic's business address, via Certified mail number 9414 7266 9904 2192  
26 9881 30, was signed by the "addressee." The signed return receipt requested form was received  
27 by the California Department of Justice, Office of the Attorney General on or about January 31,  
28 2022. A copy of the signed return receipt requested is attached to the Evidence Packet as Exhibit

1 C, and is incorporated herein by reference.

2 12. Respondent failed to file a Notice of Defense with the assigned DAG by February 9,  
3 2022. See the Declaration of Deputy Attorney General Colleen M. McGurrin attached to the  
4 Evidence Packet as Exhibit D, and is incorporated herein by reference.

5 13. Between January 1, 2022 and April 7, 2022, the Board has incurred enforcement costs  
6 in this matter in the amount of \$5,150.00 as set forth in the Declaration of DAG McGurrin  
7 attached to the Evidence Packet as Exhibit D, and incorporated herein by reference.

8 14. As of April 14, 2022, no Notice of Defense has been received, nor have any of the  
9 documents or letters served on Respondent at his address of record on December 21, 2021, and  
10 January 25, 2022, been returned by the U.S. Postal Service as undeliverable, unclaimed or  
11 otherwise. See the Declarations of DAG McGurrin and Ms. Francis attached to the Evidence  
12 Packet as Exhibits D and E, respectively, which are incorporated herein by reference.

13 15. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
16 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

17 Respondent failed to file a Notice of Defense within 15 days after service upon him of the  
18 Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition  
19 to Revoke Probation No. 800-2021-082593.

20 16. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the  
22 hearing, the agency may take action based upon the respondent's express admissions  
23 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

24 17. Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on  
26 Respondent's express admissions by way of default and the evidence before it, contained in the  
27 Evidence Packet filed herewith, finds that the allegations in Petition to Revoke Probation No.  
28 800-2021-082593 are true, and each of them separately and severally.

1 **First Cause to Revoke Probation: Failure to Comply with Biological Fluid Testing**

2 18. At all times after the effective date of Respondent's probation, in Case Number 800-  
3 2015-012720, Condition 6 stated, in pertinent part:

4 **BIOLOGICAL FLUID TESTING**

5 Respondent shall immediately submit to biological fluid testing, at Respondent's  
6 expense, upon request of the Board or its designee. "Biological fluid testing" may include,  
7 but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug  
8 screening approved by the Board or its designee. Respondent shall make daily contact with  
9 the Board or its designee to determine whether biological fluid testing is required.  
10 Respondent shall be tested on the date of the notification as directed by the Board or its  
11 designee. The Board may order a respondent to undergo a biological fluid test on any day,  
12 at any time, including weekends and holidays. Except when testing on a specific date as  
13 ordered by the Board or its designee, the scheduling of biological fluid testing shall be done  
14 on a random basis. The cost of biological fluid testing shall be borne by the respondent.

15 During the first year of probation, respondent shall be subject to 52 to 104 random  
16 tests. During the second year of probation and for the duration of the probationary term, up  
17 to five (5) years, respondent shall be subject to 36 to 104 random tests per year. Only if  
18 there has been no positive biological fluid tests in the previous five (5) consecutive years of  
19 probation, may testing be reduced to one (1) time per month. Nothing precludes the Board  
20 from increasing the number of random tests to the first-year level of frequency for any  
21 reason.

22 Prior to practicing medicine, respondent shall contract with a laboratory or service,  
23 approved in advance by the Board or its designee, that will conduct random, unannounced,  
24 observed, biological fluid testing . . .

25 (a) . . . (m).

26 The contract shall require that the laboratory directly notify the Board or its  
27 designee of non-negative results within one (1) business day and negative test results  
28 within seven (7) business days of the results becoming available. Respondent shall  
maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any  
proceedings between the Board and Respondent.

....

For purposes of this condition, the terms "biological fluid testing" and "testing"  
mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or  
hair.

For purposes of this condition, the term "prohibited substance" means ...  
alcohol, or any other substance the Respondent has been instructed by the Board not  
to use, consume, ingest, or administer to himself . . . herself.

1 If the Board confirms that a positive biological fluid test is evidence of use of a  
2 prohibited substance, Respondent has committed a major violation, as defined in  
3 section 1361.52(a), and the Board shall impose any or all of the consequences set  
4 forth in section 1361.52(b), in addition to any other terms or conditions the Board  
5 determines are necessary for public protection or to enhance Respondent's  
6 rehabilitation.

7 19. Respondent's probation is subject to revocation because he failed to comply with  
8 Condition 6, referenced above, and also in violation of the terms and conditions of probation  
9 order, effective May 22, 2020, in violation of California code of Regulations, Title 16, Section  
10 1361.52, subdivision (a) (5). The facts and circumstances regarding this violation are as follows:

11 20. On or about May 6, 2020, the Board's Probation analyst sent Respondent a letter  
12 advising him that he was required to enroll into the Board approved laboratory service FSSolution  
13 (also known as FirstSource) for random biological fluid testing, and that he must check-in daily  
14 (via landline or internet) between the hours of 12:00 a.m. and 5:00 p.m. to determine if he was  
15 required to provide a biological fluid sample that day.

16 21. On or about May 20, 2020, Respondent received a copy of Decision number 800-  
17 2015-012720, and the terms and conditions were fully explained to him. He signed an  
18 Acknowledgement of Decision indicating that he understood the terms and conditions of his  
19 probation order.

20 22. On or about May 30, June 1-3, June 5-7, June 17-18, June 20, June 27-28, July 8, July  
21 10, and July 23, 2020, Respondent failed to check-in during program hours as required. In  
22 addition, on June 5, 2020, Respondent was selected to provide a biological fluid sample;  
23 however, he failed to provide a biological fluid sample as required.

24 23. On or about July 20, 2020, Respondent was selected to provide a biological fluid  
25 sample; however, he failed to provide a biological fluid sample as required.

26 24. On or about July 31, 2020, the Board issued Respondent a Cease Practice Order  
27 (CPO) for the violations identified in paragraphs 20 and 21, above, with an order of abatement to  
28 undergo 30-days of negative biological fluid testing. The CPO order was lifted on or about  
September 11, 2020.

25 25. On or about August 1 and 2, 2020, Respondent failed to check-in during program  
26 hours as required.

1       26. On or about October 9, October 13, October 28, November 9, and November 12,  
2 2020, Respondent failed to check-in during program hours as required.

3       27. On or about December 22, 2020, the Board issued Citation number 800-2020-073387,  
4 to Respondent and fined him \$350, for the violations identified in paragraph 24, above.<sup>1</sup>

5       28. On or about December 11, December 20-21, December 29, 2020, January 2, January  
6 6, January 10-11, January 14-16, January 19, January 21, January 26-30, February 5-6, 2021,  
7 Respondent failed to check-in during program hours as required. In addition, on January 8,  
8 January 11, January 14, January 17, and February 5, 2021, Respondent was selected to provide a  
9 biological fluid sample; however, he failed to provide the biological fluid samples as required.

10       29. On or about February 26, 2021, the Board issued Respondent a Cease Practice Order  
11 for the violations identified in paragraph 26, above, with an order of abatement to undergo 30-  
12 days of negative biological fluid testing. The CPO was lifted on or about April 22, 2021.

13       30. On or about March 4 and March 17, 2021, Respondent failed to check-in during  
14 program hours as required. In addition, on March 4, 2021, Respondent was selected to provide a  
15 biological fluid sample; however, he failed to provide a biological fluid sample as required.

16       31. On or about August 3, 2021, Respondent failed to check in during program hours as  
17 required.

18       32. On or about August 4, 2021, Respondent was sent a non-compliance letter for failing  
19 to check-in on August 3, 2021.

20       33. On or about September 7, 2021, Respondent failed to check in during program hours  
21 as required and was selected to provide a biological fluid sample; however, he failed to provide a  
22 biological fluid sample as required.

23       34. On or about September 8, 2021, Respondent was sent a letter, via email and United  
24 States Postal Service, requesting an explanation as to why he failed to check-in and provide a  
25 biological fluid sample the previous day. Respondent did not provide a response to the Board's

26 \_\_\_\_\_  
27 <sup>1</sup> The citation contained two clerical errors as the actual date that Respondent failed to  
28 check-in was October 13, not the 14<sup>th</sup> as listed in the citation, and November 12, not the 11<sup>th</sup> as  
listed in the citation. All other dates listed in the citation were correct.

1 inquiry as requested.

2 35. On or about September 13, 2021, Respondent failed to check-in during program hours  
3 as required.

4 36. On or about September 15, 2021, Respondent's quarterly interview was conducted by  
5 the Board's Probation Inspector II. When asked for an explanation as to his non-compliance with  
6 the biological fluid testing condition of his probation on September 7, 2021, Respondent stated he  
7 forgot.

8 37. On or about October 10, 2021, Respondent failed to check-in during program hours  
9 as required.

10 38. On or about October 11, 2021, Respondent was sent a non-compliance letter for the  
11 missed check-in the day before. Respondent replied, via email, stating that he was sorry and, in  
12 the future, would be "more alter."

13 39. Respondent's probation is subject to revocation due to his failure to comply with  
14 Condition 6 as required.

15 **Second Cause to Revoke Probation: Violation of Probation Condition for Substance**  
16 **Abusing Licensees**

17 40. At all times after the effective date of Respondent's probation, in Case Number 800-  
18 2015-012720, Condition 9 provides, in pertinent part:

19 **VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING**

20 **LICENSEES.** Failure to fully comply with any term or condition of probation is a violation of  
21 probation.

22 A. If Respondent commits a major violation of probation as defined by section  
23 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall  
take one or more of the following actions:

24 (1) Issue an immediate cease-practice order and order Respondent to undergo a  
25 clinical diagnostic evaluation to be conducted in accordance with section 1361.5,  
26 subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's  
27 expense. The cease-practice order issued by the Board or its designee shall state that  
28 respondent must test negative for at least a month of continuous biological fluid testing  
before being allowed to resume practice. For purposes of the determining the length of  
time a respondent must test negative while undergoing continuous biological fluid testing



1 following issuance of a cease-practice order, a month is defined as thirty calendar (30) days.  
2 Respondent may not resume the practice of medicine until notified in writing by the Board  
3 or its designee that he or she may do so.

4 (2) Increase the frequency of biological fluid testing.

5 (3) Refer Respondent for further disciplinary action, such as suspension,  
6 revocation, or other action as determined by the Board or its designee.

7 B . . . .

8 C. Nothing in this Decision shall be considered a limitation on the Board's  
9 authority to revoke Respondent's probation if he or she has violated any term or condition  
10 of probation. If Respondent violates probation in any respect, the Board, after giving  
11 Respondent notice and the opportunity to be heard, may revoke probation and carry out the  
12 disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, . . . is  
13 filed against respondent during probation, the Board shall have continuing jurisdiction until  
14 the matter is final, and the period of probation shall be extended until the matter is final.

15 41. Respondent's probation is subject to revocation because he failed to comply with  
16 Condition 9, referenced above. The facts and circumstances regarding this violation are as  
17 follows:

18 42. Paragraphs 18 through 39, above, inclusive, are incorporated by reference as if fully  
19 set forth herein.

20 43. Respondent has shown a pattern of continuous non-compliance with the biological  
21 fluid testing condition of probation and his probation is subject to revocation because he failed to  
22 comply with Condition 9, referenced above.

### 23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Carlos Humberto Montenegro,  
25 M.D. has subjected his Physician's and Surgeon's Certificate No. A 48811 to discipline.

26 2. A copy of the Petition to Revoke Probation and the related documents and  
27 Declarations of Service are attached. (Evidence Packet, Exhibits A, B, C, D and E).

28 3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and  
Surgeon's Certificate based upon the following violations alleged in the Petition to Revoke  
Probation:

1 A. Respondent failed to check-in with FSSolutions during program hours on May 30,  
2 June 1-3, June 5-7, June 17-18, June 20, June 27-28, July 8, July 10, July 23, August 1-2,  
3 October 9, October 13, October 28, November 9, November 12, December 11, December  
4 20-21, and December 29, 2020, January 2, January 6, January 10-11, January 14-16,  
5 January 19, January 21, January 26-30, February 5-6, March 17, August 3, September 7,  
6 September 13, and October 10, 2021, as required by Condition 6 of Respondent's  
7 Probation Order No. 800-2015-012720, effective May 22, 2020.

8 B. Respondent failed to provide biological fluid samples when selected on June 5 and  
9 July 20, 2020, January 8, January 11, January 14, January 17, February 5, March 4, and  
10 September 7, 2021, as required by Condition 9 of Respondent's Probation Order No. 800-  
11 2015-012720, effective May 22, 2020.

12 **ORDER**

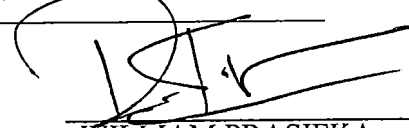
13 **IT IS ORDERED THAT** Physician's and Surgeon's Certificate No. A 48811, heretofore  
14 issued to Respondent Carlos Humberto Montenegro, M.D., is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
16 written motion requesting that the Decision be vacated and stating the grounds relied on within  
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective at 5:00 p.m. on MAY 20 2022.

20 **IT IS SO ORDERED**

20 **APR 21 2022**

21   
22 **for WILLIAM PRASIFKA**  
23 **EXECUTIVE DIRECTOR**  
24 **MEDICAL BOARD OF CALIFORNIA**  
25 **DEPARTMENT OF CONSUMER AFFAIRS**

**Reji Varghese**  
**Deputy Director**

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27 65044064.docx  
28

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2 ROBERT MCKIM BELL  
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5 Los Angeles, CA 90013  
Telephone: (213) 269-6546  
6 Facsimile: (916) 731-2117  
Email: Colleen.McGurrin@doj.ca.gov  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
13 Against:

14 CARLOS HUMBERTO MONTENEGRO, M.D.  
15 P.O. Box 94743  
Pasadena, California 91109

16 Physician's and Surgeon's Certificate No. A 48811

17 Respondent.

Case No. 800-2021-082593

PETITION TO REVOKE PROBATION

18  
19 Complainant alleges:

20 **PARTIES**

21 1. William Prasifka (Complainant) brings this Petition to Revoke Probation solely in his  
22 official capacity as the Executive Director of the Medical Board of California (Board).

23 2. On October 22, 1990, the Board issued Physician's and Surgeon's Certificate  
24 (Certificate) No. A 48811 to Carlos Humberto Montenegro, M.D. (Respondent). Said Certificate  
25 was in effect at all times relevant to the charges brought herein, except that said Certificate was  
26 subject to a Cease Practice Order (CPO), effective July 31, 2020, which was lifted on September  
27 11, 2020, and a subsequent Cease Practice Order, effective February 26, 2021, which was lifted  
28 on April 22, 2021. Respondent's Certificate will expire on August 31, 2022, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Accusation Against Carlos Montenegro, M.D.*, Case No. 22-2010-205578, the Board issued a Decision, effective April 16, 2014, in which Respondent's Certificate was revoked. However, the revocation was stayed and Respondent's Certificate was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

4. In a disciplinary action entitled *In the Matter of the First Amended Accusation and Petition to Revoke Probation Against Carlos Humberto Montenegro, M.D.*, Case No. 800-2015-012720, the Board issued a Decision, effective May 22, 2020, in which Respondent's Certificate was revoked. However, the revocation was stayed and Respondent's Certificate was placed on probation for a period of two additional (2) years with the same terms and conditions of his earlier probation, plus the addition of conditions for substance-abusing licensees. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

5. On or about December 22, 2020, the Medical Board of California issued Respondent Citation, number 800-2020-073387, ordering him to maintain compliance with all terms and conditions of his probationary orders and pay a fine of \$350, for his failures to check-in during program hours on October 9, October 14 (sic)<sup>1</sup>, October 28, November 9, and November 12 (sic), 2020. That Citation is now final and is incorporated by reference as if fully set forth.

## JURISDICTION

6. This Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 22 of the Code states:

“Board” as used in any provisions of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

8. Section 477 of the Code states:

<sup>1</sup> There was a clerical error in two of the dates listed in the citation (e.g., Respondent failed to check-in to the program on October 13, 2020, not the 14<sup>th</sup>, and on November 11, 2020, not the 12<sup>th</sup>).

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

9. Section 2004 of the Code provides, in pertinent part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary . . . provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) . . . (i).

10. Section 2227 of the Code provides, in pertinent part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his . . . license revoked upon order of the board.

(2) Have his . . . right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

11. California Code of Regulations, Title 16, section 1361.52, provides, in pertinent part:

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his . . . probation:

(1) . . .

(2) Commits multiple minor violations of probation conditions and terms;

(3) . . . (4).

(5) Fails to undergo biological fluid testing when ordered;

(6) . . . (8).

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

(1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

(c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

(1) . . . (3).

(4) Fails to comply with any term or condition of his . . . probation that does not impair public safety.

(d) If a licensee commits a minor violation, the Board will take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of licensee;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee;

(7) Take any other action as determined by the Board.

(e) Nothing in this section shall be considered a limitation on the Board's authority to

1 revoke the probation of a licensee who has violated a term or condition of that probation.

2 12. California Code of Regulation, Title 16, section 1364.10, provides:

3 (a) For purposes of this article, "board official" shall mean the executive  
4 director of the board or his or her designee.

5 (b) A board official is authorized to determine when and against whom a  
6 citation will be issued and to issue citations containing orders of abatement and fines  
7 for violations by a licensed physician or surgeon, licensed midwife, or  
8 polysomnographic technologist, technician, or trainee of the statutes and regulations  
9 referred to in Section 1364.11.

10 (c) A citation shall be issued whenever any fine is levied or any order of  
11 abatement is issued. Each citation shall be in writing and shall describe with  
12 particularity the nature and facts of the violation, including a reference to the statute  
13 or regulations alleged to have been violated. The citation shall be served upon the  
14 individual personally or by certified mail.

15 13. California Code of Regulation, Title 16, section 1364.11, subdivision (b) provides  
16 that in his or her discretion, a board official may issue a citation under Section 1364.10 to a  
17 licensee for a violation of a term or condition contained in the decision placing that licensee on  
18 probation.

19 14. California Code of Regulations, Title 16, section 1361.52, subdivision (e), provides,  
20 in pertinent part that for the purposes of this Article, "prohibited substance" means . . . alcohol; or  
21 other substance the licensee has been instructed by the Board not to use, consume, ingest, or  
22 administer to himself . . . ."

### 23 COST RECOVERY

24 15. Section 125.3 of the Code provides, in pertinent part, effective January 1, 2022:

25 (a) Except as otherwise provided by law, in any order issued in resolution of a  
26 disciplinary proceeding before any board within the department . . . upon request of  
27 the entity bringing the proceeding, the administrative law judge may direct a licensee  
28 found to have committed a violation or violations of the licensing act to pay a sum not  
to exceed the reasonable costs of the investigation and enforcement of the case.

(b) . . . .

(c) A certified copy of the actual costs, or a good faith estimate of costs where  
actual costs are not available, signed by the entity bringing the proceeding or its  
designated representative shall be prima facie evidence of reasonable costs of  
investigation and prosecution of the case. The costs shall include the amount of  
investigative and enforcement costs up to the date of the hearing, including, but not  
limited to, charges imposed by the Attorney General.

1 (d) The administrative law judge shall make a proposed finding of the amount  
2 of reasonable costs of investigation and prosecution of the case when requested  
3 pursuant to subdivision (a). The finding of the administrative law judge with regard to  
4 costs shall not be reviewable by the board to increase the cost award. The board may  
5 reduce or eliminate the cost award, or remand to the administrative law judge if the  
6 proposed decision fails to make a finding on costs requested pursuant to subdivision  
7 (a).

8 (e) If an order for recovery of costs is made and timely payment is not made as  
9 directed in the board's decision, the board may enforce the order for repayment in any  
10 appropriate court. This right of enforcement shall be in addition to any other rights  
11 the board may have as to any licensee to pay costs.

12 (f) In any action for recovery of costs, proof of the board's decision shall be  
13 conclusive proof of the validity of the order of payment and the terms for payment.

14 (g) (1) Except as provided in paragraph (2), the board shall not renew or  
15 reinstate the license of any licensee who has failed to pay all of the costs ordered  
16 under this section.

17 (2) Notwithstanding paragraph (1), the board may, in its discretion,  
18 conditionally renew or reinstate for a maximum of one year the license of any  
19 licensee who demonstrates financial hardship and who enters into a formal agreement  
20 with the board to reimburse the board within that one-year period for the unpaid  
21 costs.

22 (h) All costs recovered under this section shall be considered a reimbursement  
23 for costs incurred and shall be deposited in the fund of the board recovering the costs  
24 to be available upon appropriation by the Legislature.

25 (i) Nothing in this section shall preclude a board from including the recovery of  
26 the costs of investigation and enforcement of a case in any stipulated settlement.

27 (j) This section does not apply to any board if a specific statutory provision in  
28 that board's licensing act provides for recovery of costs in an administrative  
disciplinary proceeding.

### 29 **FIRST CAUSE TO REVOKE PROBATION**

#### 30 **(Biological Fluid Testing)**

31 16. At all times after the effective date of Respondent's probation, in Case Number 800-  
32 2015-012720, Condition 6 stated, in pertinent part:

#### 33 **BIOLOGICAL FLUID TESTING**

34 Respondent shall immediately submit to biological fluid testing, at Respondent's  
35 expense, upon request of the Board or its designee. "Biological fluid testing" may include,  
36 but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug  
37 screening approved by the Board or its designee. Respondent shall make daily contact with  
38 the Board or its designee to determine whether biological fluid testing is required.  
Respondent shall be tested on the date of the notification as directed by the Board or its  
designee. The Board may order a respondent to undergo a biological fluid test on any day,



1 at any time, including weekends and holidays. Except when testing on a specific date as  
2 ordered by the Board or its designee, the scheduling of biological fluid testing shall be done  
3 on a random basis. The cost of biological fluid testing shall be borne by the respondent.

4 During the first year of probation, respondent shall be subject to 52 to 104 random  
5 tests. During the second year of probation and for the duration of the probationary term, up  
6 to five (5) years, respondent shall be subject to 36 to 104 random tests per year. Only if  
7 there has been no positive biological fluid tests in the previous five (5) consecutive years of  
8 probation, may testing be reduced to one (1) time per month. Nothing precludes the Board  
9 from increasing the number of random tests to the first-year level of frequency for any  
10 reason.

11 Prior to practicing medicine, respondent shall contract with a laboratory or service,  
12 approved in advance by the Board or its designee, that will conduct random, unannounced,  
13 observed, biological fluid testing . . .

14 (a) . . . (m).

15 The contract shall require that the laboratory directly notify the Board or its  
16 designee of non-negative results within one (1) business day and negative test results  
17 within seven (7) business days of the results becoming available. Respondent shall  
18 maintain this laboratory or service contract during the period of probation.

19 A certified copy of any laboratory test result may be received in evidence in any  
20 proceedings between the Board and Respondent.

21 . . . .

22 For purposes of this condition, the terms "biological fluid testing" and "testing"  
23 mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or  
24 hair.

25 For purposes of this condition, the term "prohibited substance" means ...  
26 alcohol, or any other substance the Respondent has been instructed by the Board not  
27 to use, consume, ingest, or administer to himself . . . herself.

28 If the Board confirms that a positive biological fluid test is evidence of use of a  
prohibited substance, Respondent has committed a major violation, as defined in  
section 1361.52(a), and the Board shall impose any or all of the consequences set  
forth in section 1361.52(b), in addition to any other terms or conditions the Board  
determines are necessary for public protection or to enhance Respondent's  
rehabilitation.

17. Respondent's probation is subject to revocation because he failed to comply with  
Condition 6, referenced above and in violation of the terms and conditions of probation order,  
effective May 22, 2020, in violation of California code of Regulations, Title 16, Section 1361.52,  
subdivision (a) (5). The facts and circumstances regarding this violation are as follows:

18. On or about May 6, 2020, the Board's Probation analyst sent Respondent a letter  
advising him that he was required to enroll into the Board approved laboratory service FSSolution

1 (also known as FirstSource) for random biological fluid testing, and that he must check-in daily  
2 (via landline or internet) between the hours of 12:00 a.m. and 5:00 p.m. to determine if he was  
3 required to provide a biological fluid sample that day.

4 19. On or about May 20, 2020, Respondent received a copy of Decision number 800-  
5 2015-012720, and the terms and conditions were fully explained to him. He signed an  
6 Acknowledgement of Decision indicating that he understood the terms and conditions of his  
7 probation order.

8 20. On or about May 30, June 1-3, June 5-7, June 17-18, June 20, June 27-28, July 8, July  
9 10, and July 23, 2020, Respondent failed to check-in during program hours as required. In  
10 addition, on June 5, 2020, Respondent was selected to provide a biological fluid sample;  
11 however, he failed to provide a biological fluid sample as required.

12 21. On or about July 20, 2020, Respondent was selected to provide a biological fluid  
13 sample; however, he failed to provide a biological fluid sample as required.

14 22. On or about July 31, 2020, the Board issued Respondent a Cease Practice Order  
15 (CPO) for the violations identified in paragraphs 20 and 21, above, with an order of abatement to  
16 undergo 30-days of negative biological fluid testing. The CPO order was lifted on or about  
17 September 11, 2020.

18 23. On or about August 1 and 2, 2020, Respondent failed to check-in during program  
19 hours as required.

20 24. On or about October 9, October 13, October 28, November 9, and November 12,  
21 2020, Respondent failed to check-in during program hours as required.

22 25. On or about December 22, 2020, the Board issued Citation number 800-2020-073387,  
23 to Respondent and fined him \$350, for the violations identified in paragraph 24, above.<sup>2</sup>

24 26. On or about December 11, December 20-21, December 29, 2020, January 2, January  
25 6, January 10-11, January 14-16, January 19, January 21, January 26-30, February 5-6, 2021,

26  
27 <sup>2</sup> The citation contained two clerical errors as the actual date that Respondent failed to  
28 check-in was October 13, not the 14<sup>th</sup> as listed in the citation, and November 12, not the 11<sup>th</sup> as  
listed in the citation. All other dates listed in the citation were correct.

Respondent failed to check-in during program hours as required. In addition, on January 8, January 11, January 14, January 17, and February 5, 2021, Respondent was selected to provide a biological fluid sample; however, he failed to provide the biological fluid samples as required.

27. On or about February 26, 2021, the Board issued Respondent a Cease Practice Order for the violations identified in paragraph 26, above, with an order of abatement to undergo 30-days of negative biological fluid testing. The CPO was lifted on or about April 22, 2021.

28. On or about March 4 and March 17, 2021, Respondent failed to check-in during program hours as required. In addition, on March 4, 2021, Respondent was selected to provide a biological fluid sample; however, he failed to provide a biological fluid sample as required.

29. On or about August 3, 2021, Respondent failed to check in during program hours as required.

30. On or about August 4, 2021, Respondent was sent a non-compliance letter for failing to check-in on August 3, 2021.

31. On or about September 7, 2021, Respondent failed to check in during program hours as required and was selected to provide a biological fluid sample; however, he failed to provide a biological fluid sample as required.

32. On or about September 8, 2021, Respondent was sent a letter, via email and United States Postal Service, requesting an explanation as to why he failed to check-in and provide a biological fluid sample the previous day. Respondent did not provide a response to the Board's inquiry as requested.

33. On or about September 13, 2021, Respondent failed to check-in during program hours as required.

34. On or about September 15, 2021, Respondent's quarterly interview was conducted by the Board's Probation Inspector II. When asked for an explanation as to his non-compliance with the biological fluid testing condition of his probation on September 7, 2021, Respondent stated he forgot.

35. On or about October 10, 2021, Respondent failed to check-in during program hours as required.

36. On or about October 11, 2021, Respondent was sent a non-compliance letter for the missed check-in the day before. Respondent replied, via email, stating that he was sorry and would be more alert in the future.

37. Respondent's probation is subject to revocation due to his failure to comply with Condition 6 as required.

## **SECOND CAUSE TO REVOKE PROBATION**

### **(Violation of Probation Condition for Substance Abusing Licensees)**

38. At all times after the effective date of Respondent's probation, in Case Number 800-2015-012720, Condition 9 provides, in pertinent part:

#### **VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING**

**LICENSEES.** Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B . . . .

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, . . . is

1 filed against respondent during probation, the Board shall have continuing jurisdiction until  
2 the matter is final, and the period of probation shall be extended until the matter is final.

3 39. Respondent's probation is subject to revocation because he failed to comply with  
4 Condition 9, referenced above. The facts and circumstances regarding this violation are as  
5 follows:

6 40. Paragraphs 17 through 36, above, inclusive, are incorporated by reference as if fully  
7 set forth herein.

8 41. Respondent has shown a pattern of continuous non-compliance with the biological  
9 fluid testing condition of probation and his probation is subject to revocation because he failed to  
10 comply with Condition 9, referenced above.

#### 11 DISCIPLINE CONSIDERATIONS

12 42. To determine the degree of discipline, if any, to be imposed on Respondent,  
13 Complainant alleges that on or about April 16, 2014, in a prior disciplinary action titled *In the*  
14 *Matter of the Accusation Against Carlos Montenegro, M.D.* before the Board, in Case No. 22-  
15 2010-205578, Respondent's Certificate was revoked, the revocation stayed and placed on four (4)  
16 years' probation on various terms and conditions for aiding and abetting the unlicensed practice of  
17 medicine. That Decision is now final and is incorporated by reference as if fully set forth herein.

18 43. To determine the degree of discipline, if any, to be imposed on Respondent,  
19 Complainant alleges that on or about May 22, 2020, in a prior disciplinary action titled *In the*  
20 *Matter of the First Amended Accusation and Petition to Revoke Probation Against Carlos*  
21 *Humberto Montenegro, M.D.* before the Board, in Case No. 800-2015-012720, Respondent's  
22 Certificate was revoked, and the revocation stayed and his probation was extended for two (2)  
23 additional years on the same terms and conditions, in addition to the substance-abusing licensee  
24 terms and conditions for repeated negligent acts in his care and treatment of three patients and for  
25 failing to obey all laws, a violation of probation, when he was convicted of driving under the  
26 influence of alcohol. That Decision is now final and is incorporated by reference as if fully set  
27 forth herein.

28 //

1       44. To determine the degree of discipline, if any, to be imposed on Respondent,  
2 Complainant alleges that on or about July 31, 2020, the Board issued a Cease Practice Order and  
3 order of abatement to undergo 30-days of negative biological fluid testing for failing to check-in  
4 during program hours on or about May 30, June 1-3, June 5-7, June 17-18, June 20, June 27-28,  
5 July 8, July 10, and July 23, 2020, and for failing to provide a biological fluid sample on June 5,  
6 2020, when selected to provide a sample as required. That CPO was lifted on September 11,  
7 2020, is now final, and is incorporated by reference as if fully set forth herein.

8       45. To determine the degree of discipline, if any, to be imposed on Respondent,  
9 Complainant alleges that on or about December 22, 2020, in a prior action, the Board issued  
10 Citation Number 800-2020-073387, and ordered Respondent to maintain compliance with all  
11 terms and conditions of his probationary orders and to pay a fine of \$350.00, for his failures to  
12 check-in during program hours on October 9, October 14 (sic), October 28, November 9, and  
13 November 12 (sic), 2020. That Citation is now final and is incorporated by reference as if fully  
14 set forth.

15       46. To determine the degree of discipline, if any, to be imposed on Respondent,  
16 Complainant alleges that on or about February 26, 2021, the Board issued a Cease Practice Order  
17 and order of abatement to undergo 30-days of negative biological fluid testing for his failure to  
18 check-in during program hours on or about December 11, December 20-21, December 29, 2020,  
19 January 2, January 6, January 10-11, January 14-16, January 19, January 21, January 26-30,  
20 February 5-6, 2021, and his failures to provide the biological fluid samples as required on or  
21 about January 8, January 11, January 14, January 17, and February 5, 2021. That CPO was lifted  
22 on April 22, 2021, is now final, and is incorporated by reference as if fully set forth.

23 //

24 //

25 //

26 //

27 //

28 //

**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 22-2010-205578 and Case No. 800-2015-012720, and imposing the disciplinary orders that were stayed, thereby revoking Physician's and Surgeon's Certificate No. A 48811 issued to Carlos Humberto Montenegro, M.D.;


2. Revoking or suspending Physician's and Surgeon's Certificate No. A 48811, issued to Respondent, Carlos Humberto Montenegro, M.D.;

3. Revoking, suspending, or denying approval of Respondent, Carlos Humberto Montenegro, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

4. Ordering Respondent, Carlos Humberto Montenegro, M.D. to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring; and

5. Taking such other and further action as deemed necessary and proper.

DATED: DEC 21 2021

  
For: WILLIAM PRASIFKA  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

**Reji Varghese**  
**Deputy Director**

*Complainant*

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## **Exhibit A**

### **Decisions and Orders**

**Medical Board of California Case Nos. 22-2010-205578 & 800-2015-012720**



**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation    )  
Against:                                    )**

**CARLOS MONTENEGRO, M.D.    )**

**Case No. 22-2010-205578**

**Physician's and Surgeon's        )  
Certificate No. A-48811            )**

**Respondent                            )**

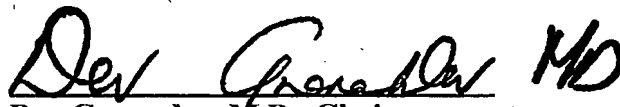
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on April 16, 2014.**

**IT IS SO ORDERED: March 17, 2014.**

**MEDICAL BOARD OF CALIFORNIA**

  
**Dev Gnanadev, M.D., Chair  
Panel B**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 CINDY M. LOPEZ  
Deputy Attorney General  
4 State Bar No. 119988  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-7373  
6 Facsimile: (213) 897-9395  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 22-2010-205578

11 CARLOS MONTENEGRO, M.D.  
12 PO BOX 94743  
PASADENA, CA 91109  
13 Physician's and Surgeon's Certificate No.  
A48811

OAH No. 2013050209

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Respondent.  
15

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Interim Executive Director of the  
21 Medical Board of California. She brought this action solely in her official capacity and is  
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
23 Cindy M. Lopez, Deputy Attorney General.

24 2. Respondent Carlos Montenegro, M.D. ("Respondent") is represented in this  
25 proceeding by attorney Nicholas D. Jurkowitz, Esq., whose address is: 11835 West Olympic  
26 Boulevard, Suite 925, Los Angeles, CA 90064.

27 3. On or about October 22, 1990, the Medical Board of California issued Physician's and  
28 Surgeon's Certificate No. A48811 to Respondent. The Physician's and Surgeon's Certificate was

1 in full force and effect at all times relevant to the charges brought in Accusation No. 22-2010-  
2 205578 and will expire on August 31, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 22-2010-205578 was filed before the Medical Board of California  
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 March 11, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 22-2010-205578 is attached as exhibit A and incorporated  
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 22-2010-205578. Respondent has also carefully read,  
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in Accusation  
26 No. 22-2010-205578, if proven at a hearing, constitute cause for imposing discipline upon his  
27 Physician's and Surgeon's Certificate.  
28

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A48811 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its  
3 designee not later than 15 calendar days after successfully completing the program or not later  
4 than 15 calendar days after the effective date of the Decision, whichever is later.

5 3. MONITORING - PRACTICE Within 30 calendar days of the effective date of this  
6 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
7 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
8 licenses are valid and in good standing, and who are preferably American Board of Medical  
9 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
10 relationship with Respondent, or other relationship that could reasonably be expected to  
11 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
12 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
13 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

14 The Board or its designee shall provide the approved monitor with copies of the Decision  
15 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the  
16 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement  
17 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,  
18 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the  
19 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed  
20 statement for approval by the Board or its designee.

21 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
22 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
23 make all records available for immediate inspection and copying on the premises by the monitor  
24 at all times during business hours and shall retain the records for the entire term of probation.

25 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
26 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
27 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
28 shall cease the practice of medicine until a monitor is approved to provide monitoring

1 responsibility.

2 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
3 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
4 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
5 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
6 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
7 preceding quarter.

8 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
9 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
10 name and qualifications of a replacement monitor who will be assuming that responsibility within  
11 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
12 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
13 notification from the Board or its designee to cease the practice of medicine within three (3)  
14 calendar days after being so notified Respondent shall cease the practice of medicine until a  
15 replacement monitor is approved and assumes monitoring responsibility.

16 In lieu of a monitor, Respondent may participate in a professional enhancement program  
17 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
18 University of California, San Diego School of Medicine, that includes, at minimum, quarterly  
19 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
20 and education. Respondent shall participate in the professional enhancement program at  
21 Respondent's expense throughout probation.

22 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
23 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
24 Chief Executive Officer at every hospital where privileges or membership are extended to  
25 Respondent, at any other facility where Respondent engages in the practice of medicine,  
26 including all physician and locum tenens registries or other similar agencies, and to the Chief  
27 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
28 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

1 calendar days.

2 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

3 5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
4 prohibited from supervising physician assistants.

5 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
6 governing the practice of medicine in California and remain in full compliance with any court  
7 ordered criminal probation, payments, and other orders.

8 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
9 under penalty of perjury on forms provided by the Board, stating whether there has been  
10 compliance with all the conditions of probation.

11 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
12 of the preceding quarter.

13 8. GENERAL PROBATION REQUIREMENTS.

14 Compliance with Probation Unit

15 Respondent shall comply with the Board's probation unit and all terms and conditions of  
16 this Decision.

17 Address Changes

18 Respondent shall, at all times, keep the Board informed of Respondent's business and  
19 residence addresses, email address (if available), and telephone number. Changes of such  
20 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
21 circumstances shall a post office box serve as an address of record, except as allowed by Business  
22 and Professions Code section 2021(b).

23 Place of Practice

24 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
25 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
26 facility.

27 License Renewal

28 Respondent shall maintain a current and renewed California physician's and surgeon's



1 license.

2 Travel or Residence Outside California

3 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
4 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
5 (30) calendar days.

6 In the event Respondent should leave the State of California to reside or to practice  
7 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
8 departure and return.

9 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
10 available in person upon request for interviews either at Respondent's place of business or at the  
11 probation unit office, with or without prior notice throughout the term of probation.

12 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
13 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
14 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
15 defined as any period of time Respondent is not practicing medicine in California as defined in  
16 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
17 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
18 time spent in an intensive training program which has been approved by the Board or its designee  
19 shall not be considered non-practice. Practicing medicine in another state of the United States or  
20 Federal jurisdiction while on probation with the medical licensing authority of that state or  
21 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
22 not be considered as a period of non-practice.

23 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
24 months, Respondent shall successfully complete a clinical training program that meets the criteria  
25 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
26 Disciplinary Guidelines" prior to resuming the practice of medicine.

27 Respondent's period of non-practice while on probation shall not exceed two (2) years.

28 Periods of non-practice will not apply to the reduction of the probationary term.

1       Periods of non-practice will relieve Respondent of the responsibility to comply with the  
2 probationary terms and conditions with the exception of this condition and the following terms  
3 and conditions of probation: Obey All Laws; and General Probation Requirements.

4       11. COMPLETION OF PROBATION. Respondent shall comply with all financial  
5 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
6 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
7 be fully restored.

8       12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
9 of probation is a violation of probation. If Respondent violates probation in any respect, the  
10 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
11 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
12 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
13 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
14 the matter is final.

15       13. LICENSE SURRENDER. Following the effective date of this Decision, if  
16 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
17 the terms and conditions of probation, Respondent may request to surrender his or her license.  
18 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
19 determining whether or not to grant the request, or to take any other action deemed appropriate  
20 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
21 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
22 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
23 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
24 application shall be treated as a petition for reinstatement of a revoked certificate.

25       14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
26 with probation monitoring each and every year of probation, as designated by the Board, which  
27 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
28 California and delivered to the Board or its designee no later than January 31 of each calendar

1 year.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
4 discussed it with my attorney, Nicholas D. Jurkowitz, Esq.. I understand the stipulation and the  
5 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated  
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
7 bound by the Decision and Order of the Medical Board of California.

8  
9 DATED:

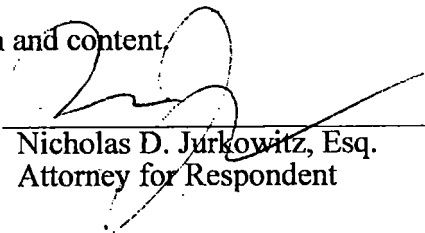
2/4/14

  
CARLOS MONTENEGRO, M.D.  
Respondent

11 I have read and fully discussed with Respondent CARLOS MONTENEGRO, M.D. the  
12 terms and conditions and other matters contained in the above Stipulated Settlement and  
13 Disciplinary Order. I approve its form and content.

14 DATED:

2-4-2014

  
Nicholas D. Jurkowitz, Esq.  
Attorney for Respondent

17 ENDORSEMENT

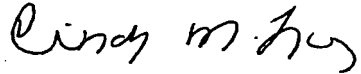
18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California.

20 Dated:

2.6.14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General

  
CINDY M. LOPEZ  
Deputy Attorney General  
Attorneys for Complainant

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 CINDY M. LOPEZ  
Deputy Attorney General  
4 State Bar No. 119988  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-7373  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MARCH 11 2013  
BY: [Signature] ANALYST

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 22-2010-205578

12 CARLOS MONTENEGRO, M.D.

13 Post Office Box 94743  
14 Pasadena, California 91109

15 Physician's and Surgeon's Certificate No.  
A48811

**ACCUSATION**

16 Respondent.

17  
18  
19 Complainant alleges:

20 PARTIES

21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Director of the Medical Board of California (Board).

23 2. On or about October 22, 1990, the Board issued Physician's and Surgeon's Certificate  
24 number A48811 to Carlos Montenegro, M.D. (Respondent). On September 13, 2012, as a result  
25 of bail conditions imposed following Complainant's Penal Code section 23 motion, Respondent's  
26 license was restricted. Those restrictions are currently still in place. His license will expire on  
27 August 31, 2014, unless renewed.  
28

## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

1       "(g) The practice of medicine from this state into another state or country without meeting  
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
4 proposed registration program described in Section 2052.5.

5       "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
6 participate in an interview scheduled by the mutual agreement of the certificate holder and the  
7 board. This subdivision shall only apply to a certificate holder who is the subject of an  
8 investigation by the board."

9       6.     Section 2052 of the Code states:

10       "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who  
11 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or  
12 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,  
13 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition  
14 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended  
15 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being  
16 authorized to perform the act pursuant to a certificate obtained in accordance with some other  
17 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand  
18 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not  
19 exceeding one year, or by both the fine and either imprisonment.

20       "(b) Any person who conspires with or aids or abets another to commit any act described in  
21 subdivision (a) is guilty of a public offense, subject to the punishment described in that  
22 subdivision.

23       "(c) The remedy provided in this section shall not preclude any other remedy provided by  
24 law."

25       //

26       //

27       //

28       //

1 CAUSE FOR DISCIPLINE

2 (Aiding and Abetting the Unlicensed Practice of Medicine)

3 7. Respondent is subject to disciplinary action under section 2052 in that he aided and  
4 abetted an unlicensed person, Alberto Cota, in the practice of medicine. The circumstances are as  
5 follows:

6 A. On August 8, 2012, in proceedings entitled, *People of the State of California vs.*  
7 *Carlos Humberto Montenegro*, case number 2CA01183 in the Superior Court of Los Angeles  
8 County, Respondent was charged with 12 counts of aiding and abetting the unlicensed practice of  
9 medicine by Alberto Cota, a violation of Business and Professions Code section 2052,  
10 subdivision (b). He was alleged to have committed these crimes from August 2009 through  
11 March 2010. It was further alleged that Respondent committed eleven counts of altering medical  
12 records in violation of Penal Code section 471.5, from January 24, 2012 to May 9, 2012. This  
13 criminal case is still pending.

14 B. On March 18, 2010, the Board received a telephone complaint from a detective at the  
15 Los Angeles Police Department (LAPD) alleging that a person named Alberto Cota was  
16 representing himself as a doctor at the medical offices of Respondent. The complaint originated  
17 from a female patient, M.T.

18 C. On February 2, 2010, M.T. went to Respondent's clinic for complaints of back pain.  
19 She did not see Respondent; instead, she was treated by Cota. Alberto Cota had the patient stand  
20 in front of him, pull her pants below her hips and he grabbed her buttocks with his right hand and  
21 held her stomach with his left hand. Then he gave her an injection in her lower back.

22 D. After Cota grabbed M.T., he moved her underwear to one side and inserted his finger  
23 into her vagina, and said, "you're good." After the exam, Cota gave M.T. his phone number and  
24 said to call him. He hugged her and left the room.

25 E. M.T. reported this to the LAPD. On March 2, 2010, M.T. was asked by the police  
26 department to do a pretext call. While on the phone, Cota confirmed that when he touched her she  
27 was "wet" and he was excited by this. They also discussed arranging a date.  
28

1 F. On March 16, 2010, Cota was arrested for a violation of PC 289(d), penetration with  
2 a foreign object.<sup>1</sup>

3 G. On April 9, 2010, an LAPD detective went to Respondent's clinic and saw Cota  
4 wearing a white lab coat that said "Dr. Cota" on it. There were no other doctors present.

5 H. Medical Board investigators interviewed several patients regarding their care and  
6 treatment at Respondent's clinic. Many of these patients were treated by Cota in or around 2009  
7 through 2012. Patient N.U., a 17-year-old male, was treated by both Cota and Respondent. Cota  
8 treated him for mosquito bites and prescribed medications.

9 I. Patient J.P., a female, went to Respondent's clinic and was treated by Cota, who she  
10 referred to as "Dr. Cota." She indicated that Respondent only came to the clinic in the afternoon.  
11 Respondent told her if he was not available, she could see Cota. Cota prescribed medications to  
12 her. J.P. had a colonoscopy performed by Cota. Although she was treated by Cota, her  
13 insurance (Anthem) was billed as if she saw Respondent.

14 J. Patient J.M.B. and her children were treated by Cota. She was always referred to Cota  
15 and was not treated by Respondent. Cota prescribed antibiotics to her and her children. He  
16 performed pap smears on her. At some point J.M.B. was told by a pharmacist that Cota was not  
17 a doctor, so she called Respondent's office to confirm this. A woman named "Samantha"  
18 answered the phone and told her the only doctor who worked at the clinic was Respondent.  
19 Samantha told J.M.B. that if she was asked by authorities to tell them only Respondent treated  
20 her.

21 K. Patient A.B.C. treated at Respondent's clinic. Her children were treated by Cota.  
22 Cota performed a surgery on her son's toe, R.B.

23 L. Patient R.C.R. and her children were treated by Cota at Respondent's clinic. Cota  
24 treated her daughters G.M., L.M., and M.M. She referred to him as "Dr. Cota" and he never  
25 corrected her. They were treated by Cota from August 2009 through June 2010.

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27 <sup>1</sup> In July 2012, Cota was convicted of sexual battery and practicing medicine without a license. He was  
28 placed on summary probation, ordered to serve time in county jail, and had to register as a sex offender.



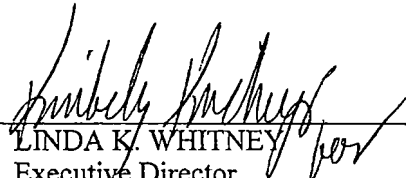
1 M. On December 16, 2011, Respondent was interviewed by investigators with the  
2 Medical Board. He admitted that he never verified Cota's credentials when he hired him as a  
3 "medical assistant." Respondent claimed he is always at the clinic when Cota is there. He  
4 admitted that his staff called him "Dr. Cota". Respondent also admitted that he never told Cota  
5 not to call himself a doctor, nor did Respondent discourage his staff from referring to him as "Dr.  
6 Cota."

7 PRAYER

8 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Medical Board of California issue a decision:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A48811,  
11 issued to Carlos Montenegro, M.D.;
- 12 2. Revoking, suspending, or denying approval of his authority to supervise physician  
13 assistants, pursuant to section 3527 of the Code;
- 14 3. Ordering him to pay the costs of probation monitoring;
- 15 4. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: March 11, 2013

18   
19 LINDA K. WHITNEY  
20 Executive Director  
21 Medical Board of California  
22 Department of Consumer Affairs  
23 State of California

24 *Complainant*

25  
26  
27  
28  
LA2013607323  
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**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Amended Accusation  
and Petition to Revoke Probation Against**

**Carlos Humberto Montenegro, M.D.**

**Physician's and Surgeon's  
Certificate License No. A 48811**

**Respondent.**

**Case No. 800-2015-012720**

**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on May 22, 2020.**

**IT IS SO ORDERED: April 24, 2020.**

**MEDICAL BOARD OF CALIFORNIA**



---

**Kristina D. Lawson, J.D., Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 COLLEEN M. MCGURRIN  
State Bar No. 147250  
4 California Department of Justice  
300 South Spring Street, Suite 1702  
5 Los Angeles, California 90013  
Telephone: (213) 269-6546  
6 Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Amended Accusation and Petition  
13 to Revoke Probation Against:

14 CARLOS HUMBERTO MONTENEGRO, M.D.  
15 P. O. Box 94743  
Pasadena, CA 91109

16 Physician's and Surgeon's Certificate No. A 48811,  
17 Respondent.  
18

Case No. 800-2015-012720

OAH No. 2018030969.1

**STIPULATED SETTLEMENT  
AND DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Colleen M.  
25 McGurrin, Deputy Attorney General.

26 2. Carlos Humberto Montenegro, M.D. (Respondent) is representing himself in this  
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 3. On or about October 22, 1990, the Board issued Physician's and Surgeon's Certificate

No. A 48811 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720, and will expire on August 31, 2020, unless renewed.

#### JURISDICTION

4. First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on October 31, 2018. Respondent timely filed his Notice of Defense contesting the Amended Accusation.

5. A copy of First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation and Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended

1 Accusation and Petition to Revoke Probation No. 800-2015-012720, if proven at a hearing,  
2 constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

3 10. For the purpose of resolving the First Amended Accusation and Petition to Revoke  
4 Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at  
5 a hearing, Complainant could establish a prima facie case for the charges in the First Amended  
6 Accusation and Petition to Revoke Probation, and that Respondent hereby gives up his right to  
7 contest those charges.

8 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
9 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
10 Disciplinary Order below.

11 12. Respondent agrees that if he ever petitions for early termination or modification of  
12 probation, or if the Board ever petitions for revocation of probation, all of the charges and  
13 allegations contained in First Amended Accusation and Petition to Revoke Probation No. 800-  
14 2015-012720 shall be deemed true, correct and fully admitted by Respondent for purposes of that  
15 proceeding or any other licensing proceeding involving Respondent in the State of California.

16 CONTINGENCY

17 13. This stipulation shall be subject to approval by the Medical Board of California.  
18 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
19 Board of California may communicate directly with the Board regarding this stipulation and  
20 settlement, without notice to or participation by Respondent. By signing the stipulation,  
21 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the  
22 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
23 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
24 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
25 the parties, and the Board shall not be disqualified from further action by having considered this  
26 matter.

27 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
28 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile

signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that the term of four years of probation imposed on Physician's and Surgeon's Certificate No. A 48811 issued to Respondent Carlos Humberto Montenegro, M.D. by the Decision and Order in Case No. 22-2010-205575, effective April 16, 2014, a true copy of which is attached as Exhibit B, is extended for an additional two (2) years, continuing the practice monitor and educational course conditions therein, and adding the following terms and conditions. All other terms and conditions of said Decision and Order remain unchanged and unaffected.

1. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Amended Accusation, but prior to the effective date of this Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than

1 15 calendar days after the effective date of this Decision, whichever is later.

2 2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
3 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in  
4 advance by the Board or its designee. Respondent shall provide the approved course provider  
5 with any information and documents that the approved course provider may deem pertinent.  
6 Respondent shall participate in and successfully complete the classroom component of the course  
7 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
8 complete any other component of the course within one (1) year of enrollment. The medical  
9 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
10 Medical Education (CME) requirements for renewal of licensure.

11 A medical record keeping course taken after the acts that gave rise to the charges in the  
12 Amended Accusation, but prior to the effective date of this Decision may, in the sole discretion of  
13 the Board or its designee, be accepted towards the fulfillment of this condition if the course would  
14 have been approved by the Board or its designee had the course been taken after the effective date  
15 of this Decision.

16 Respondent shall submit a certification of successful completion to the Board or its  
17 designee not later than 15 calendar days after successfully completing the course, or not later than  
18 15 calendar days after the effective date of this Decision, whichever is later.

19 3. ALCOHOL - ABSTAIN FROM USE: Respondent shall abstain completely from the  
20 use of products or beverages containing alcohol.

21 4. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30)  
22 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as  
23 may be required by the Board or its designee, Respondent shall undergo and complete a clinical  
24 diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed  
25 board certified physician and surgeon. The examiner shall consider any information provided by  
26 the Board or its designee and any other information he or she deems relevant, and shall furnish a  
27 written evaluation report to the Board or its designee.

28 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon

1 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of  
2 physicians and surgeons with substance abuse disorders, and is approved by the Board or its  
3 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable  
4 professional standards for conducting substance abuse clinical diagnostic evaluations. The  
5 evaluator shall not have a current or former financial, personal, or business relationship with  
6 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and  
7 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the  
8 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a  
9 threat to himself or others, and recommendations for substance abuse treatment, practice  
10 restrictions, or other recommendations related to Respondent's rehabilitation and ability to  
11 practice safely. If the evaluator determines during the evaluation process, that Respondent is a  
12 threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of  
13 such a determination.

14 In formulating his or her opinion as to whether Respondent is safe to return to either part-  
15 time or full-time practice and what restrictions or recommendations should be imposed, including  
16 participation in an inpatient or outpatient treatment program, the evaluator shall consider the  
17 following factors: Respondent's license type; Respondent's history; Respondent's documented  
18 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);  
19 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical  
20 history and current medical condition; the nature, duration and severity of Respondent's  
21 substance abuse problem or problems; and whether Respondent is a threat to himself or the  
22 public.

23 For all clinical diagnostic evaluations, a final written report shall be provided to the Board  
24 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator  
25 requests additional information or time to complete the evaluation and report, an extension may  
26 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally  
27 assigned the matter.

28 The Board shall review the clinical diagnostic evaluation report within five (5) business



1 days of receipt to determine whether Respondent is safe to return to either part-time or full-time  
2 practice and what restrictions or recommendations shall be imposed on Respondent based on the  
3 recommendations made by the evaluator. Respondent shall not be returned to practice until he or  
4 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating  
5 that he has not used, consumed, ingested, or administered to himself a prohibited substance, as  
6 defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

7 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall  
8 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic  
9 evaluation, including any and all testing deemed necessary by the examiner, the Board or its  
10 designee, shall be borne by the licensee.

11 Respondent shall not engage in the practice of medicine until notified by the Board or its  
12 designee that he is fit to practice medicine safely. The period of time that Respondent is not  
13 practicing medicine shall not be counted toward completion of the term of probation. Respondent  
14 shall undergo biological fluid testing as required in this Decision at least two (2) times per week  
15 while awaiting the notification from the Board if he is fit to practice medicine safely.

16 Respondent shall comply with all restrictions or conditions recommended by the examiner  
17 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified  
18 by the Board or its designee.

19 5. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)  
20 days of the effective date of this Decision, Respondent shall provide to the Board the names,  
21 physical addresses, mailing addresses, and telephone numbers of any and all employers and  
22 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's  
23 worksite monitor, and Respondent's employers and supervisors to communicate regarding  
24 Respondent's work status, performance, and monitoring.

25 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or  
26 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff  
27 privileges.

28 6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to

1 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
2 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
3 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
4 make daily contact with the Board or its designee to determine whether biological fluid testing is  
5 required. Respondent shall be tested on the date of the notification as directed by the Board or its  
6 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
7 any time, including weekends and holidays. Except when testing on a specific date as ordered by  
8 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
9 basis. The cost of biological fluid testing shall be borne by the Respondent.

10 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
11 During the second year of probation and for the duration of the probationary term, up to five (5)  
12 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
13 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
14 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
15 of random tests to the first-year level of frequency for any reason.

16 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
17 approved in advance by the Board or its designee, that will conduct random, unannounced,  
18 observed, biological fluid testing and meets all of the following standards:

- 19 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
20 Association or have completed the training required to serve as a collector for the United  
21 States Department of Transportation.
- 22 (b) Its specimen collectors conform to the current United States Department of  
23 Transportation Specimen Collection Guidelines.
- 24 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
25 by the United States Department of Transportation without regard to the type of test  
26 administered.
- 27 (d) Its specimen collectors observe the collection of testing specimens.
- 28 (e) Its laboratories are certified and accredited by the United States Department of Health

1 and Human Services.

2 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
3 of receipt and all specimens collected shall be handled pursuant to chain of custody  
4 procedures. The laboratory shall process and analyze the specimens and provide legally  
5 defensible test results to the Board within seven (7) business days of receipt of the  
6 specimen. The Board will be notified of non-negative results within one (1) business day  
7 and will be notified of negative test results within seven (7) business days.

8 (g) Its testing locations possess all the materials, equipment, and technical expertise  
9 necessary in order to test Respondent on any day of the week.

10 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
11 for the detection of alcohol and illegal and controlled substances.

12 (i) It maintains testing sites located throughout California.

13 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line  
14 computer database that allows the Respondent to check in daily for testing.

15 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff  
16 access to drug test results and compliance reporting information that is available 24 hours a  
17 day.

18 (l) It employs or contracts with toxicologists that are licensed physicians and have  
19 knowledge of substance abuse disorders and the appropriate medical training to interpret  
20 and evaluate laboratory biological fluid test results, medical histories, and any other  
21 information relevant to biomedical information.

22 (m) It will not consider a toxicology screen to be negative if a positive result is obtained  
23 while practicing, even if the Respondent holds a valid prescription for the substance.

24 Prior to changing testing locations for any reason, including during vacation or other travel,  
25 alternative testing locations must be approved by the Board and meet the requirements above.

26 The contract shall require that the laboratory directly notify the Board or its designee of  
27 non-negative results within one (1) business day and negative test results within seven (7)  
28 business days of the results becoming available. Respondent shall maintain this laboratory or

1 service contract during the period of probation.

2 A certified copy of any laboratory test result may be received in evidence in any  
3 proceedings between the Board and Respondent.

4 If a biological fluid test result indicates Respondent has used, consumed, ingested, or  
5 administered to himself or herself a prohibited substance, the Board shall order Respondent to  
6 cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
7 medicine or providing medical services. The Board shall immediately notify all of Respondent's  
8 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
9 provide medical services while the cease-practice order is in effect.

10 A biological fluid test will not be considered negative if a positive result is obtained while  
11 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
12 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

13 After the issuance of a cease-practice order, the Board shall determine whether the positive  
14 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
15 specimen collector and the laboratory, communicating with the licensee, his or her treating  
16 physician(s), other health care provider, or group facilitator, as applicable.

17 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
18 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

19 For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
20 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
21 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
22 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

23 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
24 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
25 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
26 any other terms or conditions the Board determines are necessary for public protection or to  
27 enhance Respondent's rehabilitation.

28 7. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of

1 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its  
2 prior approval, the name of a substance abuse support group which he shall attend for the duration  
3 of probation. Respondent shall attend substance abuse support group meetings at least once per  
4 week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse  
5 support group meeting costs.

6 The facilitator of the substance abuse support group meeting shall have a minimum of three  
7 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed  
8 or certified by the state or nationally certified organizations. The facilitator shall not have a  
9 current or former financial, personal, or business relationship with Respondent within the last five  
10 (5) years. Respondent's previous participation in a substance abuse group support meeting led by  
11 the same facilitator does not constitute a prohibited current or former financial, personal, or  
12 business relationship.

13 The facilitator shall provide a signed document to the Board or its designee showing  
14 Respondent's name, the group name, the date and location of the meeting, Respondent's  
15 attendance, and Respondent's level of participation and progress. The facilitator shall report any  
16 unexcused absence by Respondent from any substance abuse support group meeting to the Board,  
17 or its designee, within twenty-four (24) hours of the unexcused absence.

18 8. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty  
19 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or  
20 its designee for prior approval as a worksite monitor, the name and qualifications of one or more  
21 licensed physician and surgeon, other licensed health care professional if no physician and  
22 surgeon is available, or, as approved by the Board or its designee, a person in a position of  
23 authority who is capable of monitoring the Respondent at work.

24 The worksite monitor shall not have a current or former financial, personal, or familial  
25 relationship with Respondent, or any other relationship that could reasonably be expected to  
26 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
27 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
28 monitor, this requirement may be waived by the Board or its designee, however, under no

1 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

2 The worksite monitor shall have an active unrestricted license with no disciplinary action  
3 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
4 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
5 by the Board or its designee.

6 Respondent shall pay all worksite monitoring costs.

7 The worksite monitor shall have face-to-face contact with Respondent in the work  
8 environment on as frequent a basis as determined by the Board or its designee, but not less than  
9 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
10 by the Board or its designee; and review Respondent's work attendance.

11 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
12 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
13 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
14 be made to the Board or its designee within one (1) hour of the next business day. A written  
15 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
16 any other information deemed important by the worksite monitor shall be submitted to the Board  
17 or its designee within 48 hours of the occurrence.

18 The worksite monitor shall complete and submit a written report monthly or as directed by  
19 the Board or its designee which shall include the following: (1) Respondent's name and  
20 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
21 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
22 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the  
23 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;  
24 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can  
25 lead to suspected substance abuse by Respondent. Respondent shall complete any required  
26 consent forms and execute agreements with the approved worksite monitor and the Board, or its  
27 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

28 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)

1 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior  
2 approval, the name and qualifications of a replacement monitor who will be assuming that  
3 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a  
4 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the  
5 monitor, Respondent shall receive a notification from the Board or its designee to cease the  
6 practice of medicine within three (3) calendar days after being so notified. Respondent shall  
7 cease the practice of medicine until a replacement monitor is approved and assumes monitoring  
8 responsibility.

9 9. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING  
10 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of  
11 probation.

12 A. If Respondent commits a major violation of probation as defined by section  
13 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take  
14 one or more of the following actions:

15 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical  
16 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of  
17 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice  
18 order issued by the Board or its designee shall state that Respondent must test negative for at least  
19 a month of continuous biological fluid testing before being allowed to resume practice. For  
20 purposes of determining the length of time a Respondent must test negative while undergoing  
21 continuous biological fluid testing following issuance of a cease-practice order, a month is  
22 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until  
23 notified in writing by the Board or its designee that he or she may do so:

24 (2) Increase the frequency of biological fluid testing.

25 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or  
26 other action as determined by the Board or its designee.

27 B. If Respondent commits a minor violation of probation as defined by section  
28 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take

one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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DATED:

  
CARLOS HUMBERTO MONTENEGRO

ENDORSEMENT

Dated:

Respectfully submitted,

Charles M.

*Attorneys for Complainant*

15

**Exhibit A**

**First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720**

1 XAVIER BECERRA  
2 Attorney General of California  
3 E. A. JONES III  
4 Supervising Deputy Attorney General  
5 CINDY M. LOPEZ  
6 Deputy Attorney General  
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*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO OCTOBER 31, 2018  
BY [Signature] ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
10 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation and  
12 Petition to Revoke Probation Against:

Case No. 800-2015-012720

13 CARLOS HUMBERTO MONTENEGRO, M.D.  
14 P. O. Box 94743  
Pasadena, CA 91109

FIRST AMENDED  
ACCUSATION  
and  
PETITION TO REVOKE  
PROBATION

15 Physician's and Surgeon's Certificate  
16 No. A 48811,

17 Respondent.

18  
19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation and  
22 Petition to Revoke Probation solely in her official capacity as the Executive Director of the  
23 Medical Board of California, Department of Consumer Affairs (Board).

24 2. On or about October 22, 1990, the Medical Board issued Physician's and Surgeon's  
25 Certificate Number A 48811 to Carlos Humberto Montenegro, M.D. (Respondent). The  
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on August 31, 2020, unless renewed.

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3. On or about March 17, 2014, in a disciplinary action entitled *In the Matter of the Accusation Against Carlos Montenegro, M.D.* before the Medical Board of California, in Case Number 22-2010-205578, Respondent's certificate to practice medicine was revoked, the revocation was stayed and Respondent was placed on probation for four years effective April 16, 2014, with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This First Amended Accusation and Petition to Revoke Probation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

**“(b) Gross negligence.**

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a

reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.

“(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

“(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.”

7. Section 2236 of the Code provides in pertinent part that a conviction which is substantially related to the function, qualifications or duties of a physician constitutes unprofessional conduct.

8. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

### FACTS

#### **PATIENT #1**

9. Patient #1<sup>1</sup> was a patient under the care of Respondent from February 15, 2005, through November 11, 2014. Her medical records include diagnoses of depression, panic disorder, seizure disorder, hepatitis C, Attention Deficit Disorder (ADD), bipolar disorder, osteoporosis and hypothyroidism. Her record also includes a notation that she is mentally disabled, but no further information is given regarding this disability.

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<sup>1</sup> Patients are anonymized to protect their privacy.

10. Patient #1 had a prescription for Methadone at 80 mg daily from another physician. She received prescriptions from Respondent for Clonazepam<sup>2</sup> 2 mg three times daily, Lorazepam<sup>3</sup> 2 mg nightly, Zocor<sup>4</sup> 20 mg daily, Actonel<sup>5</sup> 35 mg weekly, Synthroid<sup>6</sup> .05 mg, which was increased to .075 mg based on results of a thyroid test, and Adderall 20 mg twice daily for ADD, which was increased on May 10, 2008, to 20 mg three times daily. She was also prescribed Zoloft for depression in 2011.

11. There are forms from the Addiction Research and Treatment Clinic notifying Respondent that Patient #1 was on Methadone, but no discussion appears in the record as to why she was placed on this medication or being treated at the clinic.

12. On October 29, 2014, Patient #1 reported that she was unable to sleep on a prescription received for Ativan 2 mg 1½ tablets daily. This was increased to Ativan 2 mg 2 tablets nightly. A psychiatric consultation was ordered, but no consultation report appears in her records.

13. On November 18, 2014, a gastroenterology consultation was ordered to evaluate her liver based on the diagnosis of Hepatitis C, but no consultation report appears in her records.

14. Several forms from the Addiction Research and Treatment Clinic were sent to Respondent asking for confirmation of what controlled substances were prescribed for Patient #1. The form contains a notice that states: "Medications such as opiates, benzodiazepines and ones that affect CNS function can have addictive and potentially deleterious effects when combined with methadone. Misuse of any of these may affect his/her recovery."

#### PATIENT #2

15. Patient #2 was a patient under the care of Respondent from June 6, 2011, through February 10, 2012. His medical records include diagnoses of low back pain, hypertension, depression and anxiety.

<sup>2</sup> Clonazepam is a benzodiazepine drug used to treat epilepsy, seizures and panic disorders.

<sup>3</sup> Lorazepam is a benzodiazepine drug used to control seizures.

<sup>4</sup> Zocor is an inhibitor used to lower cholesterol in the blood.

<sup>5</sup> Actonel is a bisphosphonate used to treat osteoporosis.

<sup>6</sup> Synthroid is used to treat hypothyroidism.

1 16. Respondent ordered X-rays of his back, but there is no record of the results.

2 17. On February 10, 2012, he was prescribed Viocdin ES and Ativan 1 mg nightly. The  
3 quantities are unknown since no prescription was included in the record and there is no indication  
4 in the records as to why Ativan was prescribed. If it was prescribed for anxiety, as is likely, no  
5 other non-benzodiazepine was recommended first.

6 18. Xanax was prescribed at 1 mg nightly without any indication as to why this was  
7 prescribed.

8 19. Respondent ordered a consultation with an orthopedic doctor but no consultation  
9 report appears in the records.

10 **PATIENT #3**

11 20. According to the records, Patient #3 was a patient under the care of Respondent from  
12 March 19, 2007, through May 14, 2015. Her medical records include diagnoses of Congestive  
13 Heart Failure, bipolar disorder, schizophrenia, hepatitis C, cirrhosis and polysubstance abuse.

14 21. Patient #3 was prescribed multiple benzodiazepines and stimulants, including  
15 Adderall three times daily, while on methadone. There is no note in her medical records as to why  
16 she was on methadone, although Patient #3 is noted as having a history of cocaine abuse.

17 22. The hospital records indicate that Patient #3 was hospitalized several times. Test  
18 reports indicate that she was admitted to Good Samaritan Hospital in August 2010 for  
19 bipolar/schizophrenia and fluid retention, and in September 2010 for Anasarca, hepatitis C and  
20 pneumonia. An admission record from the emergency room was included from May 23, 2011.  
21 She was hospitalized again from October 22, 2012, through November 3, 2012, for treatment of a  
22 laceration of the spleen. The notes also indicate that she was admitted to Pacific Alliance Medical  
23 Center in June 2013. No discharge summaries were included in her records.

24 23. The only admission report included is from May 23, 2011, when she was admitted to  
25 Good Samaritan Hospital for treatment of leg pain and edema.

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**FIRST CAUSE FOR DISCIPLINE**

**(Repeated Negligent Acts)**

24. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that Respondent was negligent in his care and treatment of three patients. The circumstances as follows:

25. Respondent was negligent in not prescribing the lowest possible dose of benzodiazepines to Patient #1, despite a warning about the possible addictive and potentially deleterious effects on her recovery when combined with use of methadone.

26. Respondent was negligent in prescribing Adderall 20 mg three times daily to Patient #3 for ADD despite her history of panic disorder, since Adderall can exacerbate panic disorder. Adderall also should not have been prescribed based on a statement in her chart that she had a problem with cocaine.

27. Respondent was negligent in prescribing Clonazepam and Adderall to Patient #1 together because of the risk of possible seizures and anxiety when these medications are combined.

28. Respondent was negligent in prescribing Clonazepam to Patient #1 instead of another non-addictive medication to treat seizures because of her known history of addiction.

29. Respondent was negligent in prescribing Lorazepam at night for sleep to Patient #1, because of her diagnosis of bipolar disorder and an existing prescription for Clonazepam three times daily.

30. Respondent was negligent in prescribing multiple benzodiazepines and stimulants to Patient #3 while she was on methadone. Respondent breached the standard of care in not prescribing the lowest possible dose of benzodiazepines to a patient on methadone, who also had a diagnosis of hepatitis.

31. Respondent was negligent in prescribing Ativan to Patient #2 without considering another non-benzodiazepine medication first.

32. Respondent was negligent in failing to chart why both Xanax and Ativan were prescribed to Patient #2.



1        33. Respondent was negligent in the treatment of Patients #1, 2 and 3 in prescribing  
2 benzodiazepines in combination with opiates without a record of discussing the possible  
3 complications these medications have when combined together.

4                                    **SECOND CAUSE FOR DISCIPLINE**

5                                    **(Failure to Maintain Adequate and Accurate Records)**

6        34. Respondent is subject to disciplinary action under Code section 2266, in that  
7 Respondent failed to maintain adequate and accurate records. The circumstances are as follows:

8        35. Respondent's records were inadequate since they did not show that he discussed the  
9 potential side effects and complications of combining opiates with benzodiazepines with any of  
10 the three patients; nor did the records show the numbers of medications and refills that were  
11 given.

12       36. The records did not record the reason why Patient #1 was on methadone or the  
13 specifics of her stated mental disability.

14       37. The records for Patient #1 indicate that a psychiatric consultation and a  
15 gastroenterology consultation were ordered but the records do not include these consultation  
16 reports.

17       38. The records for Patient #3 did not record the reason for her being on methadone. Her  
18 records contain references to multiple hospital visits, but only contain one admission report.

19       39. The records did not accurately reflect the reason Xanax was prescribed to Patient #2  
20 or the reason for a later prescription of Ativan.

21       40. The records for Patient #2 show that X-rays were ordered, but no results appear in the  
22 records. Patient #2 was also ordered to see an orthopedic doctor but no consultation report was  
23 included with his records.

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1 legal limit.

2 F. On August 7, 2018, when Respondent pled no contest, he was sentenced to 3-  
3 years summary probation, ordered to participate in a 3-month first offender alcohol and  
4 drug education program, ordered to pay the accident victim restitution, and attend AA  
5 meetings.

6 **DISCIPLINARY CONSIDERATIONS**

7 43. To determine the degree of discipline, if any, to be imposed on Respondent,  
8 Complainant alleges that on or about March 17, 2014, in a prior disciplinary action entitled *In the*  
9 *Matter of the Accusation Against Carlos Montenegro, M.D.* before the Medical Board of  
10 California, in Case Number 22-2010-205578, Respondent's certificate to practice medicine was  
11 revoked, the revocation was stayed and Respondent was placed on probation for four years  
12 effective April 16, 2014, with certain terms and conditions. That decision is now final and is  
13 incorporated by reference as if fully set forth herein.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Medical Board of California issue a decision:

17 1. Revoking the probation that was granted by the Medical Board of California in Case  
18 No. 22-2010-205578 and imposing the disciplinary order that was stayed thereby revoking  
19 Physician's and Surgeon's Certificate No. A 48811 issued to Carlos Humberto Montenegro, M.D.;

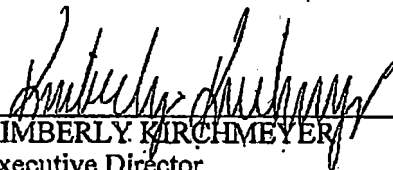
20 2. Revoking or suspending Physician's and Surgeon's Certificate Number A 48811,  
21 issued to Carlos Humberto Montenegro, M.D.;

22 3. Revoking, suspending or denying approval of Carlos Humberto Montenegro, M.D.'s  
23 authority to supervise physician assistants and advanced practice nurses;

24 4. Ordering Carlos Humberto Montenegro, M.D., if placed on probation, to pay the  
25 Board the costs of probation monitoring; and  
26  
27  
28

1 5. Taking such other and further action as deemed necessary and proper.

2  
3 DATED: October 31, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

4  
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7 LA2017505833  
53083248.docx

**Exhibit B**

**Decision and Order in Case No. 22-2010-205578**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**CARLOS MONTENEGRO, M.D.**

**Case No. 22-2010-205578**

**Physician's and Surgeon's  
Certificate No. A-48811**

**Respondent**

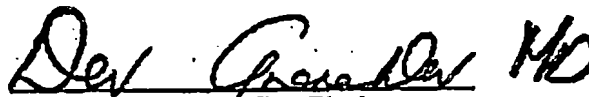
**DECISION**

-----The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the  
-----Decision and Order of the Medical Board of California, Department of Consumer Affairs,  
State of California.

-----This Decision shall become effective at 5:00 p.m. on April 16, 2014.

**IT IS SO ORDERED: March 17, 2014.**

**MEDICAL BOARD OF CALIFORNIA**



**Dev Gnanndev, M.D., Chair  
Panel B**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 CINDY M. LOPEZ  
Deputy Attorney General  
4 State Bar No. 119988  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-7373  
6 Facsimile: (213) 897-9395  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 22-2010-205578

11 CARLOS MONTENEGRO, M.D.  
12 PO BOX 94743  
PASADENA, CA 91109  
13 Physician's and Surgeon's Certificate No.  
A48811

OAH No. 2013050209

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Respondent.

15  
16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Kimberly Kirchmeyer ("Complainant") is the Interim Executive Director of the  
21 Medical Board of California. She brought this action solely in her official capacity and is  
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
23 Cindy M. Lopez, Deputy Attorney General.

24 2. Respondent Carlos Montenegro, M.D. ("Respondent") is represented in this  
25 proceeding by attorney Nicholas D. Jurkowitz, Esq., whose address is: 11835 West Olympic  
26 Boulevard, Suite 925, Los Angeles, CA 90064.

27 3. On or about October 22, 1990, the Medical Board of California issued Physician's and  
28 Surgeon's Certificate No. A48811 to Respondent. The Physician's and Surgeon's Certificate was

1 in full force and effect at all times relevant to the charges brought in Accusation No. 22-2010-  
2 205578 and will expire on August 31, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 22-2010-205578 was filed before the Medical Board of California  
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 March 11, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 22-2010-205578 is attached as exhibit A and incorporated  
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 22-2010-205578. Respondent has also carefully read,  
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in Accusation  
26 No. 22-2010-205578, if proven at a hearing, constitute cause for imposing discipline upon his  
27 Physician's and Surgeon's Certificate.  
28



10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY:

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A48811 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. **PROFESSIONALISM PROGRAM (ETHICS COURSE).** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its  
3 designee not later than 15 calendar days after successfully completing the program or not later  
4 than 15 calendar days after the effective date of the Decision, whichever is later.

5 3. MONITORING - PRACTICE Within 30 calendar days of the effective date of this  
6 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
7 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
8 licenses are valid and in good standing, and who are preferably American Board of Medical  
9 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
10 relationship with Respondent, or other relationship that could reasonably be expected to  
11 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
12 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
13 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

14 The Board or its designee shall provide the approved monitor with copies of the Decision  
15 and Accusation; and a proposed monitoring plan. Within 15 calendar days of receipt of the  
16 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement  
17 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,  
18 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the  
19 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed  
20 statement for approval by the Board or its designee.

21 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
22 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
23 make all records available for immediate inspection and copying on the premises by the monitor  
24 at all times during business hours and shall retain the records for the entire term of probation.

25 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
26 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
27 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
28 shall cease the practice of medicine until a monitor is approved to provide monitoring

responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense throughout probation.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

1 calendar days.

2 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

3 5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
4 prohibited from supervising physician assistants.

5 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
6 governing the practice of medicine in California and remain in full compliance with any court  
7 ordered criminal probation, payments, and other orders.

8 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
9 under penalty of perjury on forms provided by the Board, stating whether there has been  
10 compliance with all the conditions of probation.

11 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
12 of the preceding quarter.

13 8. GENERAL PROBATION REQUIREMENTS.

14 Compliance with Probation Unit

15 Respondent shall comply with the Board's probation unit and all terms and conditions of  
16 this Decision.

17 Address Changes

18 Respondent shall, at all times, keep the Board informed of Respondent's business and  
19 residence addresses, email address (if available), and telephone number. Changes of such  
20 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
21 circumstances shall a post office box serve as an address of record, except as allowed by Business  
22 and Professions Code section 2021(b).

23 Place of Practice

24 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
25 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
26 facility.

27 License Renewal

28 Respondent shall maintain a current and renewed California physician's and surgeon's

1 license.

2 Travel or Residence Outside California

3 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
4 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
5 (30) calendar days.

6 In the event Respondent should leave the State of California to reside or to practice  
7 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
8 departure and return.

9 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
10 available in person upon request for interviews either at Respondent's place of business or at the  
11 probation unit office, with or without prior notice throughout the term of probation.

12 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
13 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
14 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
15 defined as any period of time Respondent is not practicing medicine in California as defined in  
16 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
17 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
18 time spent in an intensive training program which has been approved by the Board or its designee  
19 shall not be considered non-practice. Practicing medicine in another state of the United States or  
20 Federal jurisdiction while on probation with the medical licensing authority of that state or  
21 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
22 not be considered as a period of non-practice.

23 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
24 months, Respondent shall successfully complete a clinical training program that meets the criteria  
25 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
26 Disciplinary Guidelines" prior to resuming the practice of medicine.

27 Respondent's period of non-practice while on probation shall not exceed two (2) years.

28 Periods of non-practice will not apply to the reduction of the probationary term.

1       Periods of non-practice will relieve Respondent of the responsibility to comply with the  
2 probationary terms and conditions with the exception of this condition and the following terms  
3 and conditions of probation: Obey All Laws; and General Probation Requirements.

4       11. COMPLETION OF PROBATION. Respondent shall comply with all financial  
5 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
6 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
7 be fully restored.

8       12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
9 of probation is a violation of probation. If Respondent violates probation in any respect, the  
10 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
11 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
12 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
13 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
14 the matter is final.

15       13. LICENSE SURRENDER. Following the effective date of this Decision, if  
16 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
17 the terms and conditions of probation, Respondent may request to surrender his or her license.  
18 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
19 determining whether or not to grant the request, or to take any other action deemed appropriate  
20 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
21 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
22 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
23 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
24 application shall be treated as a petition for reinstatement of a revoked certificate.

25       14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
26 with probation monitoring each and every year of probation, as designated by the Board, which  
27 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
28 California and delivered to the Board or its designee no later than January 31 of each calendar

1 year.

2 ACCEPTANCE

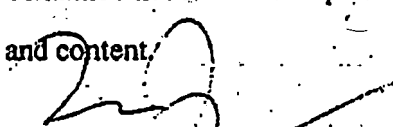
3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
4 discussed it with my attorney, Nicholas D. Jurkowitz, Esq.. I understand the stipulation and the  
5 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated  
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
7 bound by the Decision and Order of the Medical Board of California.

8  
9 DATED: 2/4/14

  
CARLOS MONTENEGRO, M.D.  
Respondent

11 I have read and fully discussed with Respondent CARLOS MONTENEGRO, M.D. the  
12 terms and conditions and other matters contained in the above Stipulated Settlement and  
13 Disciplinary Order. I approve its form and content.

14 DATED: 2-4-2014

  
Nicholas D. Jurkowitz, Esq.  
Attorney for Respondent

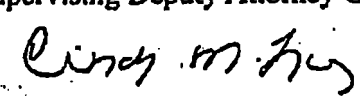
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California.

20 Dated: 2.6.14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General

  
CINDY M. LOPEZ  
Deputy Attorney General  
Attorneys for Complainant



## Exhibit A

10/10/10

10/10/10

10/10/10

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO ~~MARCH 11 2013~~  
BY: ~~Q. P. M. A. S.~~ ANALYST

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 CINDY M. LOPEZ  
Deputy Attorney General  
4 State Bar No. 119988  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-7373  
Facsimile: (213) 897-9395  
7 Attorneys for Complainant

8 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
9 DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 22-2010-205578

12 CARLOS MONTENEGRO, M.D.

13 Post Office Box 94743  
Pasadena, California 91109

ACCUSATION

14 Physician's and Surgeon's Certificate No.  
15 A48811

16 Respondent.

17  
18  
19 Complainant alleges:

20 PARTIES

21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Director of the Medical Board of California (Board).

23 2. On or about October 22, 1990, the Board issued Physician's and Surgeon's Certificate  
24 number A48811 to Carlos Montenegro, M.D. (Respondent). On September 13, 2012, as a result  
25 of bail conditions imposed following Complainant's Penal Code section 23 motion, Respondent's  
26 license was restricted. Those restrictions are currently still in place. His license will expire on  
27 August 31, 2014, unless renewed.  
28

## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

1       "(g) The practice of medicine from this state into another state or country without meeting  
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
4 proposed registration program described in Section 2052.5.

5       "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
6 participate in an interview scheduled by the mutual agreement of the certificate holder and the  
7 board. This subdivision shall only apply to a certificate holder who is the subject of an  
8 investigation by the board."

9       6. Section 2052 of the Code states:

10       "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who  
11 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or  
12 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,  
13 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition  
14 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended  
15 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being  
16 authorized to perform the act pursuant to a certificate obtained in accordance with some other  
17 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand  
18 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not  
19 exceeding one year, or by both the fine and either imprisonment.

20       "(b) Any person who conspires with or aids or abets another to commit any act described in  
21 subdivision (a) is guilty of a public offense, subject to the punishment described in that  
22 subdivision.

23       "(c) The remedy provided in this section shall not preclude any other remedy provided by  
24 law."

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26       //

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1 CAUSE FOR DISCIPLINE

2 (Aiding and Abetting the Unlicensed Practice of Medicine)

3 7. Respondent is subject to disciplinary action under section 2052 in that he aided and  
4 abetted an unlicensed person, Alberto Cota, in the practice of medicine. The circumstances are as  
5 follows:

6 A. On August 8, 2012, in proceedings entitled, *People of the State of California vs.*  
7 *Carlos Humberto Montenegro*, case number 2CA01-183 in the Superior Court of Los Angeles  
8 County, Respondent was charged with 12 counts of aiding and abetting the unlicensed practice of  
9 medicine by Alberto Cota, a violation of Business and Professions Code section 2052,  
10 subdivision (b). He was alleged to have committed these crimes from August 2009 through  
11 March 2010. It was further alleged that Respondent committed eleven counts of altering medical  
12 records in violation of Penal Code section 471.5, from January 24, 2012 to May 9, 2012. This  
13 criminal case is still pending.

14 B. On March 18, 2010, the Board received a telephone complaint from a detective at the  
15 Los Angeles Police Department (LAPD) alleging that a person named Alberto Cota was  
16 representing himself as a doctor at the medical offices of Respondent. The complaint originated  
17 from a female patient, M.T.

18 C. On February 2, 2010, M.T. went to Respondent's clinic for complaints of back pain.  
19 She did not see Respondent; instead, she was treated by Cota. Alberto Cota had the patient stand  
20 in front of him, pull her pants below her hips and he grabbed her buttocks with his right hand and  
21 held her stomach with his left hand. Then he gave her an injection in her lower back.

22 D. After Cota grabbed M.T., he moved her underwear to one side and inserted his finger  
23 into her vagina, and said, "you're good." After the exam, Cota gave M.T. his phone number and  
24 said to call him. He hugged her and left the room.

25 E. M.T. reported this to the LAPD. On March 2, 2010, M.T. was asked by the police  
26 department to do a pretext call. While on the phone, Cota confirmed that when he touched her she  
27 was "wet" and he was excited by this. They also discussed arranging a date.

1 F. On March 16, 2010, Cota was arrested for a violation of PC 289(d), penetration with  
2 a foreign object.<sup>1</sup>

3 G. On April 9, 2010, an LAPD detective went to Respondent's clinic and saw Cota  
4 wearing a white lab coat that said "Dr. Cota" on it. There were no other doctors present.

5 H. Medical Board investigators interviewed several patients regarding their care and  
6 treatment at Respondent's clinic. Many of these patients were treated by Cota in or around 2009  
7 through 2012. Patient N.U., a 17-year-old male, was treated by both Cota and Respondent. Cota  
8 treated him for mosquito bites and prescribed medications.

9 I. Patient J.P., a female, went to Respondent's clinic and was treated by Cota, who she  
10 referred to as "Dr. Cota." She indicated that Respondent only came to the clinic in the afternoon.  
11 Respondent told her if he was not available, she could see Cota. Cota prescribed medications to  
12 her. J.P. had a colonoscopy performed by Cota. Although she was treated by Cota, her  
13 insurance (Anthem) was billed as if she saw Respondent.

14 J. Patient J.M.B. and her children were treated by Cota. She was always referred to Cota  
15 and was not treated by Respondent. Cota prescribed antibiotics to her and her children. He  
16 performed pap smears on her. At some point J.M.B. was told by a pharmacist that Cota was not  
17 a doctor, so she called Respondent's office to confirm this. A woman named "Samantha"  
18 answered the phone and told her the only doctor who worked at the clinic was Respondent.  
19 Samantha told J.M.B. that if she was asked by authorities to tell them only Respondent treated  
20 her.

21 K. Patient A.B.C. treated at Respondent's clinic. Her children were treated by Cota.  
22 Cota performed a surgery on her son's toe, R.B.

23 L. Patient R.C.R. and her children were treated by Cota at Respondent's clinic. Cota  
24 treated her daughters G.M., L.M., and M.M. She referred to him as "Dr. Cota" and he never  
25 corrected her. They were treated by Cota from August 2009 through June 2010.

26  
27 <sup>1</sup> In July 2012, Cota was convicted of sexual battery and practicing medicine without a license. He was  
28 placed on summary probation, ordered to serve time in county jail, and had to register as a sex offender.

1 M. On December 16, 2011, Respondent was interviewed by investigators with the  
2 Medical Board. He admitted that he never verified Cota's credentials when he hired him as a  
3 "medical assistant." Respondent claimed he is always at the clinic when Cota is there. He  
4 admitted that his staff called him "Dr. Cota". Respondent also admitted that he never told Cota  
5 not to call himself a doctor, nor did Respondent discourage his staff from referring to him as "Dr.  
6 Cota."

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Medical Board of California issue a decision:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A48811,  
11 issued to Carlos Montenegro, M.D.;
- 12 2. Revoking, suspending, or denying approval of his authority to supervise physician  
13 assistants, pursuant to section 3527 of the Code;
- 14 3. Ordering him to pay the costs of probation monitoring;
- 15 4. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: March 11, 2013

18   
19 LINDA K. WHITNEY  
20 Executive Director  
21 Medical Board of California  
22 Department of Consumer Affairs  
23 State of California

24 Complainant

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